
SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY
WRIT PETITION No. 10928 OF 2006

BETWEEN

M. Vittal Rao

..... **Petitioner**

And

Union of India,
Rep. by its Secretary to Government of India,
Ministry of Finance, New Delhi & others

.....**Respondents**

Counsel for the petitioner : Shri Siva

Counsel for respondent Nos. 1 to 3 : Shri A. Rajasekhar Reddy,
Assistant Solicitor General

Counsel for respondent Nos. 4 and 5 : Shri Kotireddy Idamakanti

Dated: 28.09.2006

:: O R D E R ::

Per G.S. SINGHVI, CJ

Having failed to persuade the Central Administrative Tribunal, Hyderabad Bench (for short 'the Tribunal') to stay the promotions from the cadre of Data Entry Operator to the cadre of Inspector, the petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution.

The petitioner joined service in Customs and Central Excise Department (Hyderabad Commissionerate) in 1993 as Data Entry Operator Grade A. After seven years, he was promoted as Data Entry Operator Grade B. In the year 2002, the department issued instructions for re-structuring the cadres. Circular dated 7.12.2002 issued for this purpose became subject matter of litigation, which ended with the disposal of Writ Petition Nos.45 and 2378 of 2005 vide order dated 7.3.2005 and Writ Petition No.7963 of 2004 vide order dated 2.3.2006. In compliance of the directions given by this Court, the Government of India issued communication No.32022/70/2003-Ad.IIIA, dated 17.5.2006.

The petitioner filed an application under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act') for quashing communication dated 17.5.2006. He also prayed for restraining the respondents from holding the proceedings of the Departmental Promotion Committee for making promotions to the cadre of Inspectors. The application filed by the petitioner, which was registered as Original Application No.308 of 2006 was admitted by the Tribunal, but his prayer for interim relief was not

entertained. This is the reason why he has sought intervention of this Court for stalling the proceedings of the Departmental Promotion Committee.

Shri N. Siva, learned counsel for the petitioner argued that communication dated 17.5.2006 is based on a total mis-interpretation of the policy of re-structuring contained in Circular dated 7.12.2002 and the orders passed by this Court and, therefore, the respondents should be restrained from making promotions to the cadre of Inspectors. Learned counsel further argued that once the Tribunal has found merit in the petitioner's challenge to communication dated 17.5.2006 and admitted the Original Application filed by him, it should have stayed the proceedings of the Departmental Promotion Committee. Learned counsel submitted that if the respondents are allowed to make promotions ignoring the policy of re-structuring of cadres framed by the Government of India, the petitioner will suffer irreparable injury inasmuch as all the posts of Inspectors may be filled by promoting the members of other cadres and he may not get any substantive relief at the time of final adjudication of the application pending before the Tribunal.

We have thoughtfully considered the submissions of the learned counsel, but have not felt impressed. Rather, we are convinced that the discretion exercised by the Tribunal not to grant interim relief in terms of the prayer made by the petitioner does not suffer from any legal infirmity warranting interference by this Court.

It is trite to say that in matters involving adjudication of service disputes like appointments, seniority, promotion, confirmation etcetera, the Courts are extremely loath to entertain the prayer of the applicants/petitioners for grant of interim relief. In cases of termination of services or reversion, the Court may be inclined to entertain the prayer for stay because rights of third parties are not involved, but the same does not hold good for cases involving determination of disputes relating to seniority, promotion, confirmation etcetera. In the latter category of cases, any order of injunction or stay is bound to affect the rights of unknown number of persons. Therefore, in such matters, an order of injunction or stay does not deserve to be made except when the Court is convinced that non-grant of injunction or stay would cause irreparable injury to the applicant/petitioner. As and when a case involving resolution of dispute relating to seniority, promotion, confirmation or the like is finally decided, the Court can give effective relief to the successful party; the Court may direct re-determination of seniority or confirmation or re-consideration of the case of the applicant/ petitioner for promotion to the particular cadre or post. In an extreme case, the Court may issue order directing promotion of the aggrieved person. The Court can also direct retrospective promotion of the aggrieved person and set off the injustice by directing the concerned authority to pay him arrears of dues of wages/salary with retrospective effect. An order of injunction or stay in such matters, which results not only in stultifying the functioning of the department, but gravely affects others, who are, in most of the cases, not even parties before the Court or the Tribunal must be avoided. If an application or petition filed questioning the seniority or promotion is ultimately dismissed and in the meantime interim order is passed by the Court or Tribunal stalling the promotions, no effective mechanism is available with the Court or the Tribunal to redeem the injustice which may have been perpetrated on the persons who may have been denied promotion. No Court can pass an order directing a public authority or the employer to retrospectively promote the employee and give him consequential benefits.

The sum and substance of the above discussion is that the factors like irreparable injury, balance of convenience and public interest are always against the passing of an interim order by the Court which may have the effect of frustrating the promotions of others and have an adverse impact on the working of the department/organisation.

In the present case, the petitioner did not implead as party respondents any of the persons likely to be affected by acceptance of his prayer in the Original Application and the Writ Petition. If the Tribunal was

to pass an interim order in his favour and stall promotions to the cadre of Inspectors, an unknown number of un-identified persons would have suffered irreparable injury. Fortunately, for them, the Tribunal did not pass such an order. Therefore, we do not see any reason whatsoever to take a different view and entertain the petitioner's prayer for restraining the respondents from making promotions to the posts of Inspector.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, interim order dated 30.5.2006 shall stand automatically vacated.

For filing a frivolous petition like this one, the petitioner is saddled with costs of Rs.5,000/-. The amount of costs shall be deposited by the petitioner with the Andhra Pradesh State Legal Services Authority within a period of one month. The Member Secretary, Andhra Pradesh State Legal Services Authority is directed to inform the Court in writing whether or not the petitioner has deposited the amount of costs so that if it becomes necessary further direction may be given for realization of the amount of costs.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

28.09.2006

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